

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
)  
Telephone Company-Cable Television ) CC Docket No. 87-266  
Cross-Ownership Rules, )  
Sections 63.54-63.58 )  
)  
and )  
)  
Amendments of Parts 32, 36, 61, ) RM-8221  
64 and 69 of the Commission's Rules to )  
Establish and Implement Regulatory )  
Procedures for Video Dialtone Service )  
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INFORMATION SUBMISSION OF  
U S WEST COMMUNICATIONS, INC.

I. INTRODUCTION AND SUMMARY

The Federal Communications Commission ("Commission") has described the term "customer proprietary network information" ("CPNI") to include "[i]nformation about customers' network services and customers' use of those services that a BOC possesses by virtue of its provision of network services."<sup>1</sup> While the term clearly came into existence within the context of

<sup>1</sup> In the Matter of Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 10 FCC Rcd. 244, 353 n.428 (citing 1988 ONA Plan Order, 4 FCC Rcd. at 215 ¶ 411) (1994) ("VDT Order"), appeals pending sub nom. NCTA v. FCC, Nos. 94-1750, et al. (D.C. Cir. pet. for rev. filed Dec. 15, 1994).

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basic telephony provisioning, and there are analogies that can be made or drawn between the telephony and the video dialtone ("VDT") environments, those analogies are not as parallel as the Commission might first think. In a VDT environment, as U S WEST Communications, Inc. ("U S WEST")<sup>2</sup> plans to offer it, a local exchange carrier ("LEC") has relationships with two parties, one more obvious than the other. First, we have a direct relationship with the Level II Providers, who we will charge for certain VDT services, pursuant to the terms and conditions of our VDT tariff. Second, we have a less direct and immediate relationship with the residential end-user consumer. While we will provide basic VDT service to that consumer, that consumer will not generally order VDT service directly from us,<sup>3</sup> nor will U S WEST bill that consumer directly.

While U S WEST will obviously have a relationship with a residential user, since we will be provisioning VDT service to that consumer's home, our relationship with that consumer will be substantially more attenuated than it is in a telephony environment, where end users traditionally and routinely order basic telephony services from us, receive bills from us, and call us directly to report trouble or inquire about other services. Given the

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<sup>2</sup> Unless otherwise stated or modified by the context, during the course of this pleading the term U S WEST refers to the U S WEST's Level I VDT platform.

<sup>3</sup> During the U S WEST Omaha VDT trial, it is conceivable, though not very likely, that a residential end user would contact U S WEST directly for VDT services. In such a situation, U S WEST would fill the order. After the Omaha trial, U S WEST will have no direct relationship with residential end users with respect to the ordering of U S WEST's VDT service.

differences between a telephony and VDT environment, the term CPNI loses its original context and, consequentially, some of its significance.

In a VDT environment, U S WEST is providing certain "network services" to one entity, i.e., the Level II Provider, but that entity is not receiving such services directly on its line as might be the case with traditional telephony network services. A different entity, i.e., a residential end user is receiving the network services, but not necessarily as the result of a direct purchase relationship with U S WEST.

Despite the fact that the term CPNI lacks some of its relevancy in a VDT environment, U S WEST plans to use the information that we collect and have access to in a VDT environment in a way that protects the privacy expectations of residential consumers and the confidentiality expectations of Level II Providers. As has always been our internal company practice, we will not make consumer or Level II Provider information (i.e., "customer information") available to third parties in the absence of a request from or the consent of the customer. This certainly advances the Commission's pro-privacy CPNI objectives. Furthermore, we will not share individually-identifiable customer information between or among Level II Providers, beyond that information associated with their own customers. In particular, we will not share individually-identifiable customer information with our enhanced Level II Provider, except where the consumer is also the customer

of our Level II.<sup>4</sup> Thus, we will also advance the Commission's CPNI competitive objectives.

As is obvious from the above, all the hysteria and shrill allegations of organizations such as the National Cable Television Association ("NCTA") about how LECs expect to collect and use consumer viewing information in a way that compromises consumer privacy expectations or how they intend to advance their own affiliated operations and harm those of their competitors by releasing proprietary Level II information to their affiliated operations is totally unfounded, at least in the case of U S WEST. U S WEST will be doing no such thing.

## II. THE MANNER IN WHICH U S WEST WILL BE PROVIDING VDT SERVICES

### A. In A VDT Environment, The Relationship Between U S WEST And A Consumer End-User Is Different Than In A Telephony Environment

The manner in which U S WEST will be offering our common carriage VDT services will result in our having a relationship with two discrete customers, i.e., the residential or consumer end user and the Level II Providers utilizing the U S WEST VDT platform for the delivery of their services or programs. While it is theoretically possible for a consumer to "order" U S WEST VDT service, we do not anticipate that such will be the

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<sup>4</sup> We will provide certain aggregated data to various Level II Providers. See note 14, infra.

case in many instances.<sup>5</sup> Rather, we will be advised by Level II Providers that U S WEST's VDT service should be activated<sup>6</sup> on a consumer's line, so that the consumer can receive the Level II Provider's services.

As a result of our business decisions regarding the manner of marketing VDT services, U S WEST will have direct contact with few residential end users. Thus, we will collect very little residential end-user specific "CPNI." The "CPNI" we will collect will be confined to the fact that an end user is an active recipient of U S WEST's VDT service capabilities. While our common carriage network operations will also collect and have access to certain limited information on consumer access/viewing capabilities (particularly with respect to analog channel activations), we do not consider such information to be U S WEST "CPNI."

**B. U S WEST's Most Direct Relationship In A VDT Environment  
Will Be With Level II Providers**

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<sup>5</sup> U S WEST will not actively market our VDT services to end users. The major "marketing" will be done by various Level II Providers (of which U S WEST will be one via our TeleChoice offering). During the Omaha trial, we will, however, process an end user's order for stand-alone U S WEST VDT service, if requested. See note 3, supra. Such would result in the creation of U S WEST end-user CPNI, which is discussed more fully below.

<sup>6</sup> Orders will be placed by Level II Providers with U S WEST. A constituent component of the order (which will include the provisioning of the Level II Providers' services) will be an order to activate the end user's "VDT-ready line" with U S WEST's VDT platform service.

In the VDT environment, U S WEST is notifying Level II Providers of network deployment information through the vehicle of "homes passed" information. This information includes the street address of the home "now capable" of receiving VDT service (i.e., "VDT-ready"). Also included is a Service Location Identifier (a 9-digit code) which cross references the street address. This information is provided from a database via a machine-readable medium (such as a disk). While a VDT ready home has the network capability in place to receive U S WEST's VDT services, no "activation" of the services occurs until an order from an end user or a notification from a Level II Provider occurs.

U S WEST will interact with Level II Providers in such a manner that we will be advised by them who their customers are (i.e., what individuals should have U S WEST's VDT service activated), what analog services or programming those customers should have access to, and if those end users experience trouble with either their access or their reception.

Communications between U S WEST's Level I VDT platform and the various Level II Providers served by that platform will generally be done via a computerized Video Information Services Terminal Access System ("VISTA"). Through VISTA, Level II Providers will initiate service provisioning transactions,<sup>7</sup> event management transactions, and trouble reports.<sup>8</sup>

U S WEST will receive this information and act upon it. And, we will charge the Level II Provider for all of these interactions/services at the filed tariff rate.<sup>9</sup>

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<sup>7</sup> Level II Providers will advise U S WEST of the home address and the Service Location Identifier of the end user, so that VDT service can be "activated." This is similar to other enhanced service provider ("ESP") arrangements, where an ESP acts as an agent of an end user for ordering purposes and for the provisioning of a complementary network service ("CNS") on an end user's line. This activity results in U S WEST end-user CPNI, as is discussed more fully below.

<sup>8</sup> As U S WEST's primary relationship will be with the Level II Providers, rather than residential consumers, we expect the majority of trouble reports about residential end-user access or reception problems to come to us from the Level II Providers via the VISTA. Once the trouble report is received, U S WEST will then proceed to determine if the problem is a result of our VDT platform network operations or if there is some other problem. We will then report back the results to the Level II Provider, who will be in communication with the consumer.

<sup>9</sup> Thus, in the majority of cases, U S WEST's most direct customer relationship with respect to VDT services will be with the Level II Providers. Acting at the direction of the Level II Provider, we will activate programming and initiate trouble or maintenance activities with respect to the residential end user's receipt of services provided by the Level II Provider. We

For purposes of the Commission's end-user CPNI analyses, the above-described transactional information of most interest would be the "events management" directions sent by the Level II Providers to U S WEST's Level I service platform. It is that information that one might attempt to correlate to "subscriber viewing information," as that term is used in a cable context.<sup>10</sup>

Whatever individually-identifiable customer information of this nature is in U S WEST's possession will have to come to us from the Level II Providers. Those Providers will advise U S WEST of those analog programs or services or applications which should be made available to the residential consumer, or which ones should be deleted or deactivated. Using the U S WEST Level I platform interdiction capabilities, we will "turn on" or "off" the relevant channels. While U S WEST will know which channels are available to which consumers, we will have no knowledge about whether any particular channel is ever viewed by the consumer once activated or what discrete show or program might be watched by the consumer on that channel.

With respect to digital services, U S WEST will have access to even less individually-identifiable consumer information. Since digital provisioning requires no interdiction function, U S WEST's VDT Level I platform will have no information about what programming is being

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will then charge the Level II Providers for service activations, event management and trouble activities.

<sup>10</sup> See 47 USC § 551 (b) (1) ("personally identifiable information concerning any subscriber").

delivered to consumers via digital signals. We will only know “usage” data, i.e., that some information (digital bit stream) was sent at a certain date for a certain time. Thus, it is obvious that while we will have certain consumer “access” or “delivery” information, we will have virtually no consumer “viewing” information.

C. How Information Will Be Treated As A Result Of These Relationships

While U S WEST will have certain information identifiable to the consumer’s potential consumption (i.e., events management information), this information is not information that U S WEST would have access to as a result of our independent relationship with the residential end user. Thus, we do not consider it to be U S WEST customer CPNI. Consumer access or consumption information comes to us only as a result of our relationship with the Level II Providers, and as a result of the services we provide and bill to them.<sup>11</sup>

Consumer access and service/programming provisioning and consumption information is clearly considered “proprietary” by the Level II Provider, both as between it and its customer and as between it and other Level II Providers. U S WEST fully intends to treat the information with the confidentiality it requires and deserves. However, we do not consider such

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<sup>11</sup> Essentially, the “end user” is not a customer of U S WEST for purposes of this kind of information.



information to be Level II Provider "CPNI." While it is information that comes to U S WEST by virtue of its common carrier relationship with Level II Providers, it is not information associated with a Level II Provider's "use" of those services.<sup>12</sup> The network services are associated with the end users', not the Level II Providers', lines.

Despite the absence of a neat fit between U S WEST's relationships in a VDT environment with the Commission's description of CPNI, U S WEST intends to treat all information our Level I VDT platform secures from our provision of VDT services as proprietary to both the residential end user and the Level II Provider.<sup>13</sup> We will not release consumer information to third parties without the consumer's consent. Nor will we share customer-specific information between or among Level II Providers. Level II Providers will only have access to information about their own customers, or aggregate information compiled from individually-identifiable information about their

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<sup>12</sup> This is analogous to a situation that the Commission has confronted in the past. "Call-forwarded-to-number" information is CPNI associated with an end user who has such functionality on his/her line. It is not the CPNI of the answering service to which the end user has forwarded his/her number, because it is not a feature/function of that answering service's telephone service or line status. Under a literal application of the Commission's CPNI rules, LECs could have access to such information absent a customer restriction for any lawful purpose. However, many LECs agreed early on (and were later mandated) not to create a "list" of customers by the call-forwarded-to-number, because to do so would create a list of proprietary relationships to which the LEC was not a party and could create at least the appearance of competitive impropriety. Of special note is the fact that the Commission did not deem it necessary to "change" its definition of CPNI to meet this situation. It was clear that the situation could be addressed appropriately without such drastic action, especially because the LECs had already indicated their willingness to treat the information in a proprietary fashion vis-à-vis the answering service.

<sup>13</sup> For example, U S WEST's Level II Gateway (i.e., TeleChoice) will not have access to individual end user access/viewing information when that information was generated as a result of an individual's relationship with a different Level II Provider.

own customers.<sup>14</sup> As a network provider, we will, however use the information for purposes of embellishing and improving our VDT network design and functionality.

### III. WHAT IS "CPNI" VIS-À-VIS U S WEST AND ITS "CUSTOMERS"?

#### A. End-User CPNI

What "feature or function" would be on a residential end user's line strictly as a result of the consumer's relationship with U S WEST and its common carriage VDT Level I service?<sup>15</sup> The only feature or function would be an indication that the end user had U S WEST's Level I VDT service. And, to the extent that such indication inherently carried with it information that the residential end user had access to common channels,<sup>16</sup> the

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<sup>14</sup> U S WEST's Level I VDT platform will capture and save gross information such as total number of customers served; total number of channels subscribed to; information on usage, time of day; traffic statistics; and ratios of usage between analog/digital services. This information is basic network information which will be used for purposes of network sizing, Level II Provider billing, and to provide Level II Providers with certain aggregated information about their own customer base. U S WEST will assess the need to provide broader aggregate data, i.e., aggregate data based on total Level I information. Depending on the need and demand, U S WEST may make such information available, as well.

<sup>15</sup> Whatever the features or functions might be would be analogous to features and functions associated with basic telephony that the Commission has described as CPNI.

<sup>16</sup> By common channels, we mean those channels (i.e., channels 2-13) that will not have interdiction capability, and that will pass through to the end user even if the only service purchased is U S WEST's VDT service. The programming for these common channels is being determined by various Level II Providers, not by U S WEST.

identification of the fact of such access would also be end-user CPNI, but of a “public” nature.<sup>17</sup>

Thus, U S WEST considers the fact that a residential end user has U S WEST’s Level I VDT service to be U S WEST customer CPNI. Despite the fact that such information conveys little of a sensitive nature, we would not release this information to third parties without the consent of the individual.

**B. LEVEL II PROVIDER “INFORMATION”**

As discussed above, other information about a consumer’s services will also be available to U S WEST’s VDT common carriage operation. Level II Providers will advise U S WEST about the channels that its customers are to receive as part of the Level II Providers’ service offering (i.e., those channels that have an interdiction capability, but which are not being blocked as a result of the terms of the contractual relationship between the consumer and the Level II Provider);<sup>18</sup> will advise us when channels are not being

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<sup>17</sup> While meeting, perhaps, the Commission’s description of CPNI, in actual fact the identification of the common channels would not be “proprietary,” as everyone would know (as a result of our public tariff filing or as a matter of common knowledge) what channels were common and were part and parcel of our VDT offering. Thus, once an end user was identified as having U S WEST VDT service, the fact that the individual also had access to certain channels would be a matter of common knowledge.

<sup>18</sup> U S WEST will bill the Level II Provider, in part, based on the number of customers served and the number of channels made available to those respective customers through the VDT platform on the Level II Provider’s behalf.

appropriately received by the consumer;<sup>19</sup> and will communicate certain other information to U S WEST. This individually-identifiable information will be communicated so that U S WEST can provide certain services to the Level II Provider and so that billing to the Level II Provider can occur accurately for all services rendered.

This individually-identifiable information is not Level II Provider CPNI, as it is not information reflective of features and functions on the Level II Provider's "line" or network. However, it is obviously information proprietary to the Level II Provider, vis-à-vis other Level II Providers. And, it is undoubtedly information that a consumer would want to have closely held.<sup>20</sup>

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<sup>19</sup> In these circumstances, U S WEST will provide certain trouble screening and maintenance services with respect to the residential end user's service, for which the Level II Provider will be billed.

<sup>20</sup> As stated above, U S WEST will not release this information without consent from the consumer. A Level II Provider, however, might not be an ESP subject to the Commission's CPNI rules. Neither is a Level II Provider a "cable operator" for purposes of Title VI of the Communications Act or the Cable Act's Subscriber Privacy provisions. Thus, at least from a strictly legal perspective, a Level II Provider could lawfully release such information to others without customer consent.

But the Commission must be educated in this area by more than strict legal codas and rules of law. First, it is clear that the general industry practice is not to release this kind of information, absent customer consent. A Level II Provider that sought to violate or compromise these existing expectations would not remain in business very long. Second, it is undoubtedly to the Level II Provider's advantage not to share this kind of proprietary information beyond the confines of its corporate organizations. Third, the scope of the Commission's authority to impose "CPNI" or cable-type regulations on ESPs or non-LEC/non-ESP businesses is questionable. Unless or until the Commission has some reason to believe, or some record evidence, that abuses in this area are occurring, it should refrain from intrusive regulatory intervention and let the market regulate itself.

While the information at issue is proprietary to the Level II Provider in relation to its customers and its competitors, it is not proprietary vis-à-vis the network common carrier provider. All the above-described information is necessary for the common carrier VDT provider to offer the appropriate tariffed services and to bill the Level II Provider for the ultimate services rendered. Thus, the VDT common carrier operations will use this information for purposes such as billing and collection, sizing and defining its network, determining new and better services for Level II Providers, research and analysis, etc. The U S WEST Level I VDT operation may also use this information to create "aggregate" information of value to Level II Providers.<sup>21</sup>

#### IV. U S WEST'S LEVEL II AND INFORMATION AVAILABLE TO IT

For the Commission's convenience, U S WEST herein succinctly states what information our VDT Level II provider will have access to and what it will not, so that there will be no confusion or misunderstanding in this area. U S WEST's Level II Provider (i.e., TeleChoice) will have access only to U S WEST customer VDT CPNI in those situations where TeleChoice is the Level II Provider ordering the VDT service on behalf of its customer.

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<sup>21</sup> See note 14, supra.

In the event that U S WEST determines to merge the marketing functions associated with VDT and telephony,<sup>22</sup> unrestricted end user telephony CPNI will be made available to TeleChoice personnel. TeleChoice would not, however, have access to any U S WEST customer-restricted telephony CPNI. And, it would be required to utilize systems/databases with mechanized, password ID restrictions.

U S WEST's TeleChoice will only have access to its own customer's access, channel delivery or programming information. It will not have access to the access or programming information of customers of other Level II Providers.

## V. CONCLUSION

U S WEST believes that the analyses of the CPNI issues that we have undertaken and presented above are not only lawful but totally fair to the interests of Level II Providers. We believe that all the objections that commentators such as the NCTA have lodged against the Commission's

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<sup>22</sup> For the Omaha trial, U S WEST will not be engaging in "joint marketing" per se. As stated above, we do not expect many end users to call the general telephony business offices for U S WEST VDT service. We will have a VDT operations center to take repair calls and schedule installation appointments. Incoming callers wanting telephony services will be directed to a telephone service representative. Over time, U S WEST expects that there will be increased synchrony with respect to service centers and service provisioning. The Commission's mechanized database requirements/restrictions will be incorporated into those plans and designs.

currently-framed CPNI rules, and their possible inadequacy in a VDT environment, are satisfied by our analyses.

We urge the Commission to refrain from dramatically changing its CPNI rules, as it is obvious that the goals associated with those rules can be accommodated without regulatory intervention. And, the power of the marketplace should not be underestimated as competition drives new entrants to create not just products and services but relationships with customers that have endurance. Such relationships require that consumers be treated with fairness. Absent evidence to the contrary, the Commission should not assume that such will not be the case.

Respectfully submitted,

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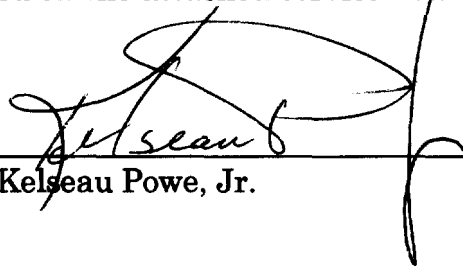
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March 10, 1995

## CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 10th day of March, 1995, I have caused a copy of the foregoing **INFORMATION SUBMISSION** to be served via hand-delivery upon the persons listed on the attached service list.



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